



Natural Resources Conservation Service  
P.O. Box 2890  
Washington, D.C. 20013

EMERGENCY WATERSHED PROTECTION PROGRAM MANUAL (EWPPM)  
390 – EWPPM  
Circular No. 2

**SUBJECT:** PDM – Implementation of Emergency Watershed Protection Program Floodplain Easement (EWPP-FPE) Enrollment

**Purpose.** To rescind all prior guidance on implementation of EWPP-FPE enrollments including Circular 1, dated November 5, 2008, and to issue new implementation guidance on enrollment of new EWPP-FPE's.

**Effective Date.** This Circular is effective immediately.

**Background.** Initial guidance for implementation of the Floodplain Easement component of the Emergency Watershed Protection Program was issued as Circular 4 to the National Watersheds Manual (NWM) dated June 20, 1997. The policy was revised with a memorandum from Warren Lee dated June 29, 1998.

Because there have been significant changes in the WRP business model and processes since the EWPP-FPE guidance was last issued, policy was further updated by Circular 1 to the National EWPP Manual, dated November 5, 2008, to bring the EWPP-FPE business model and processes in line with WRP to the extent practicable and allowable by statute.

The policy in Circular 1 placed significant restrictions on the level of restoration that was to be allowed on floodplain easements enrolled in EWPP. This policy has been reconsidered and adjusted to restore the floodplain to its natural state, as practical.

**Cancel.** Circular Number 1, dated November 5, 2008. All prior policy issued by letter, bulletin, Circular or memorandum that was rescinded by Circular 1 remains cancelled.

**Revised Policy.** The current WRP business process, as issued by Circular 50, Title 440, Conservation Programs, will be followed for enrollment of floodplain easements in the EWPP, unless otherwise changed by this Circular. Once it is deployed, EWPP floodplain easements will be managed in the new Easement Management Business Tool. Long term management, maintenance, and enforcement of easements enrolled in EWPP-FPE will follow existing WRP policy.

The current Interim Easements Data Entry tool will be revised to allow for the entry of new EWPP-FPE applications. All States shall utilize this tool to manage and track applications.

#### A. Applications

Landowners may only enroll land in EWPP-FPE through a permanent easement. Landowners must apply for the EWPP-FPE using the Application for Long-Term Contracted Assistance (Form AD-1153). Applications for enrollment of land in a EWPP floodplain easement will be accepted during an announced sign-up period when funds are made available by Congress.

Each State must develop and utilize an application checklist to ensure that all required information for the applicant is provided before the application is considered for funding. Evaluation of the applications will involve three primary steps:

- (1) Gathering landowner information and preliminary investigations.
- (2) Onsite land eligibility determination, environmental ranking, and developing preliminary plan information.
- (3) Selecting applications for funding.

#### STEP 1

The items that must be completed before moving the application forward in the process are:

- a. Determine landowner eligibility:
  - (1) Landowner must provide a copy of the vesting deed to the land.
  - (2) If the landowner is an entity:
    - (a) The entity must provide to the Farm Service Agency (FSA) a list of the individuals that comprise the entity including the percent of ownership for each individual.
    - (b) The entity must provide documents to FSA and the Natural Resources Conservation Service (NRCS) that show the entity to be a legal and valid entity in the State and which member(s) has the authority to sign contractual documents on behalf of the entity.
    - (c) The EWPP is not a Farm Bill conservation program and applicants are not required to meet the Adjusted Gross Income, Highly Erodible Land or Wetland Conservation requirements of the Farm Bill.
    - (d) The 7 year ownership provisions in the WRP statute do not apply to EWPP Floodplain easements.
- b. Conduct a preliminary title search to determine if there are title issues that would preclude or delay enrolling the land in EWPP-FPE
- c. Conduct a preliminary records search as part of Environmental Due Diligence/All Appropriate Inquiry (AAI) to ensure there are no potential hazardous substance issues that would preclude or delay enrollment of the land in EWPP-FPE or affect the easement value

**NOTE:** Generally, NRCS will secure preliminary title search and preliminary record search services from a non-NRCS vendor. These services will be procured using an appropriate method, and funds will be obligated directly to that contract

#### STEP 2

After all items required in Step 1 have been completed and the application is cleared to continue forward in the enrollment process, then begin Step 2 activities. An on site investigation will be conducted to:

- a. Determine land eligibility.
- b. Conduct preliminary planning activities.
- c. Complete the environmental ranking.

To be eligible for enrollment in EWPP-FPE the land must:

- a. Be located within the watershed that is designated as eligible for participation. A minimum of 65 percent of the acreage proposed for enrollment must be located within the authorized watershed; and
- b. Have been damaged by flooding at least twice within the previous 10 years or at least once in the last twelve months; and
- c. Be other lands within the floodplain that are functionally dependent on acres eligible under Step 1, b. above, or that would improve the practical management of the easement. No more than one acre of other land may be enrolled for each acre of land eligible under Step 1, b. above;
- d. Lands that would be inundated or adversely impacted as a result of a dam breach; and
- e. Be privately owned, or owned by State or local units of government. Federally owned lands are not eligible for enrollment.

If the land is determined to be eligible for enrollment, the site will be evaluated and the ranking worksheet completed. The Hazardous Substance Checklist, Preliminary Certificate of Inspection and Possession, National Historic Preservation Act Assessment, National Environmental Policy Act Environmental Assessment, and an Endangered Species Act Assessment must also be completed.

A preliminary restoration plan will be developed during the on-site visit. The purpose of the preliminary plan is to document that the proposed restoration meets the objectives of the landowner and the requirements of the EWPP-FPE as determined by NRCS. The landowner will sign the preliminary restoration plan to document that they are in concurrence with the proposed restoration. The plan will also include an estimate of restoration costs which will be used for ranking purposes only. This plan will not be used to estimate costs for restoration fund obligation because it is only preliminary and not generally accurate enough for this purpose. **CRITICAL:** Restoration on floodplain easements will include all necessary conservation practices, measures and activities required to restore the floodplain functions and values to the natural conditions to the greatest extent practicable. Detailed restoration policy is provided with this circular.

### STEP 3

Step 3 of the application process involves selecting the applications that will be offered tentative funding approval. The State Conservationist (STC) will list all applications received during the announced sign-up period in rank order, beginning with the highest ranked easement first.

Once applications are listed in rank order, the STC will select the number of applications that can be funded based on the guidance provided in the Allowance letter.

Compensation for easements will utilize the values created for WRP compensation as described below.



A letter of tentative selection will be provided to each selected application (See Attachment 1 – Sample Letter of Tentative Acceptance). The letter will be sent using certified mail with a return receipt. The letter will clearly explain that this tentative selection does not bind the NRCS or the United States, to enroll the proposed project in the EWPP-FPE, nor does it bind the landowner to continue with enrollment in the program.

The letter will clearly indicate that the application has been tentatively selected for enrollment and that NRCS is making an offer to purchase the easement at the compensation amount indicated on the Option Agreement to Purchase (OATP) (Form AD-1157) that will be attached to the letter.

The letter will also indicate that continuing the enrollment process is contingent upon the return of the OATP by the landowner with all appropriate signatures within the time period specified in the letter. If the form is not returned within the required time period, the application will be cancelled. Generally, the landowner is allowed 15 calendar days to sign and return the document. This deadline can be adjusted by the STC as necessary. Once the OATP is returned and signed by the STC, the property is considered enrolled in WRP and funds will be obligated for the easement acquisition only.

**NOTE:** In some cases it may be more cost effective for the landowner to secure the legal boundary survey. If this option is used, the landowner must secure a written bid for the survey from a state certified and licensed professional surveyor that is based on the Land Survey Specifications for Natural Resources Conservation Service Easement Programs (Attachment 5). The bid is to be provided to NRCS prior to NRCS signing the OATP. The funds for the survey will be obligated to the landowner at the same time as the obligation of funds for the easement compensation.

The OATP has an effective period of 12 months from the date of the STC signature. The effective period may be extended when necessary using the OATP Amendment 1 (Form AD-1157A). The STC may delegate, in writing, the authority to sign the OATP (and Amendments). No further delegation of this authority is allowed.

## **B. Acquisition**

### **1. Compensation**

When the landowner indicates a desire to continue the enrollment process, an OATP (Form AD-1157) will be prepared to offer the landowner the lowest of:

- a. an area-wide market analysis or survey;
- b. the amount corresponding to a geographical area rate cap (GARC), as determined by the Secretary in regulations; or
- c. the offer made by the landowner.

The current market survey/analysis and GARC that has been developed and approved for WRP for the counties that are eligible to participate in EWPP-FPE will be used to determine the values for a. and b. above.

**CRITICAL:** Appraisals will not be allowed for EWPP-FPE enrollment. If a State did not conduct a market survey/analysis for WRP then one must be conducted according to the guidance detailed in National Bulletin 300-9-4, dated November 3, 2008.

The Form AD-1157 should be sent with a cover letter, by certified mail, with a return receipt. The Form AD-1157 can be hand delivered to speed up the process. When the Form AD-1157 is hand delivered, the applicant will sign a note indicating receipt of the form and the date it was received. The applicant will be given a specified time frame to return the Form AD-1157. This is generally 15 days, but can be less depending on program obligation deadlines.

When the OATP has been signed by the applicant and the STC the acres will be considered enrolled in the program. At this time, the funds will be obligated to the landowner as the vendor for the easement purchase cost only. The landowner may choose to assign all or a portion of the easement acquisition payment to the closing agent through a properly executed assignment of payment provided to NRCS along with the signed OATP.

After the OATP has been signed, a legal boundary survey will be ordered. Legal boundary surveys will be conducted on all easements that have reached this stage of the process. The funds for the survey will not be obligated to each individual application. The surveys will be obtained using an appropriate procurement method, and funds will be obligated to the procurement document for the surveys. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as surveys are ordered through a task order process. Surveys must be conducted by a state certified and licensed professional surveyor in accordance with the Land Survey Specifications for Natural Resources Conservation Service Easement Programs (Attachment 5). When the survey has been completed and accepted as properly completed and accurate, an OATP Amendment 1 (Form AD-1157A) will be necessary to reflect the correct acres indicated by the survey. Once the OATP Amendment 1 is signed by the landowner and the STC, the obligation will be adjusted as necessary. The application now moves on to the closing process.

## 2. Closing

Funds for the closing services will not be obligated to each individual application. Closing services will be secured through an appropriate procurement method, and funds will be obligated directly to that procurement document. It is recommended that States use a Blanket Purchase Agreement or Indefinite Delivery/Indefinite Quantity type arrangement. Funds would be obligated as closing services are ordered through a task order process. The obligation for closing services does not include the easement acquisition funds. The closing process will follow the WRP closing process. All new floodplain easements will be formally accepted, in writing, by an NRCS employee with the appropriate delegation of authority and will be recorded as part of the warranty easement deed utilizing an Office of General Counsel (OGC) approved acceptance document. Due to the variation of Uniform Conservation Easement Act requirements among the States, this acceptance document will be developed in coordination with the appropriate regional OGC.

**NOTE:** All easements will be recorded on the NRCS-LTP-20, Emergency Watersheds Protection Program Floodplain Warranty Easement Deed, dated August 2005.

### **C. Restoration**

Once the landowner has signed the OATP, and the application has moved towards the closing process, the final restoration plan should be developed, including all necessary field surveys and engineering designs that the STC determines are needed to ensure that there is an accurate estimate of restoration costs. Restoration on floodplain easements will include all necessary conservation practices, measures and activities required to restore the floodplain functions and values to the natural conditions to the greatest extent practicable. Any restoration of wetlands should be restricted to the wetland type(s) that were present in the natural conditions, if any. Removal of structures including buildings that are an impediment to the proper functioning of the floodplain may be cost shared. This would include removing dikes to allow flood waters to access the historic floodplain.

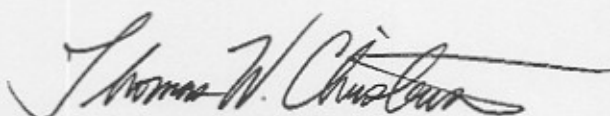
When the final restoration plan has been developed and necessary final engineering designs have been completed, a decision will be made, with agreement from the landowner, as to how the restoration will be completed. If restoration will be completed through a long term contract with the landowner, the Long-Term Agreement (Form AD-1154), the Conservation Plan Schedule of Operations (Form AD-1155), and other appropriate documents will be prepared. After these documents have been signed by the STC, funds will be obligated for the restoration.

If restoration will be completed using some other appropriate procurement method, the appropriate documents will be prepared. When these documents have been signed by the STC or designee, the funds will be obligated directly to that procurement document, not to the individual easement. It is possible that the restoration funds will not be obligated in the same fiscal year that easement purchase funds are obligated. Regardless of the method to be used for completing the restoration, the final restoration plan will be signed by both NRCS and the landowner.

Removal of existing structures, including fences and incidental farm buildings, is an allowable restoration practice, if necessary to provide for ability of the floodplain to properly function during flood events. Restoration will not be implemented when the primary purpose is wetland restoration or maximizing wildlife habitat benefits. Cost-share for restoration will be 100 percent of the actual cost of installing restoration practices.

### **D. Management, Monitoring and Enforcement**

Management, monitoring and enforcement on land enrolled in EWPP-FPE will follow current WRP policy and procedures.



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Attachment 1 - Sample Letter of Tentative Acceptance

Attachment 2 - Business Process Flow Chart

Attachment 3 - Business Process Flow Chart - Action Details

Attachment 4 – Emergency Watershed Protection Program Floodplain  
Warranty Easement Deed

Attachment 5 – Land Survey Specification for Natural Resources Conservation Service  
Easement Programs